

(SPACE BELOW FOR FILING STAMP ONLY)

CITY ATTORNEY

2011 SEP -8 AM 11: 03

SOLOMON E. GRESSEN [SBN: 164783]
STEVEN V. RHEUBAN [SBN: 48538]
LAW OFFICES OF RHEUBAN & GRESSEN
15910 VENTURA BOULEVARD, SUITE 1610
ENCINO, CALIFORNIA 91436
TELEPHONE: (818) 815-2727
FACSIMILE: (818) 815-2737

Attorneys for Plaintiff Cindy Guillen-Gomez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE.

Defendants.

CASE NO.: BC 414 602

DECLARATION OF SOLOMON E. GRESSEN
IN RESPONSE TO THE COURT'S
DIRECTION ON AUGUST 31, 2011

Assigned to: Hon. Joanne B. O'Donnell, Judge
Dept. 37

Complaint Filed: May 28, 2009

Trial Dates:

Steve Karagiosian - February 15, 2012
Cindy Guillen Gomez - April 3, 2012

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK,

Cross-Complainants,

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant.

DECLARATION OF SOLOMON E. GRESSEN

I, Solomon E. Gresen, declare as follows:

1. I am an attorney at law, authorized to practice before all Courts in the State of
California. The following facts are true of my own personal knowledge or, if stated on information

1 and belief, I am informed and believe such facts to be true, and if called as a witness in this action, I
2 would competently testify thereto.

3 2. This declaration is in response to the Court's direction on August 31, 2011, that briefs
4 be filed concerning the ongoing discovery dispute. I have read the minute order dated August 31,
5 2011.

6 3. The discovery dispute in this case began immediately after documents were produced
7 by Plaintiffs in or around August 2009. Plaintiffs produced hundreds of documents, many of which
8 were the subject of motions for preliminary injunctions filed in Department 84 with Judge Chalfant.
9 On August 27, 2009, Judge Chalfant granted the motion for preliminary injunction in part, and
10 denied the motion in part, and ordered Plaintiffs to return and/or destroy any of the protected
11 documents in their possession. A true and correct copy of the order is attached, marked as Exhibit
12 "A," and is incorporated herein by this reference as though set forth at length. Plaintiffs have timely
13 complied with Judge Chalfant's order and all documents subject to the order have been returned.

14 4. While Judge Chalfant was wrestling with the issue of the protective orders requested
15 by Defendant, Plaintiffs filed a motion for a protective order concerning the attorney/client
16 privileges following the cessation of the deposition of Plaintiff Elfego Rodriguez for that purpose.
17 Defendants filed concurrent motions to compel, seeking to learn which of the documents produced
18 in this case were given to Plaintiffs' counsel by Elfego Rodriguez.

19 5. On October 2, 2009, this Court granted Plaintiff's request for a protective order
20 because "Plaintiffs' counsel's objection on the grounds that the question sought information
21 violative of the attorney-client privilege is well taken. The attorney-client privilege covers all forms
22 of communication, including the transmission of specific documents. (Citations.)" "The fact of the
23 transmission triggers the privilege." A true and correct copy of this Court's October 2, 2009, ruling
24 containing this language is attached, marked as Exhibit "B," and is incorporated by this reference as
25 though set forth at length.

26 6. Following their failure to obtain the information from this Court, Defendants have
27 filed a seemingly endless series of motions with the discovery referee designed to get around this

28 ///

1 Court's initial order and find out which of the various Plaintiffs gave their counsel the documents
2 which were ordered returned.

3 7. The present dispute concerns Plaintiffs' responses to interrogatories, which seek to
4 learn the location from which Plaintiffs' Cindy Guillen-Gomez and Steve Karagiosian obtained the
5 documents which were the subject of the injunction issued by Judge Chalfant. In response to our
6 initial receipt of the 12th Report of the Discovery Referee, Plaintiffs Steve Karagiosian and Cindy
7 Guillen Gomez provided verified further responses to the interrogatories as ordered by the
8 Discovery Referee, true and correct copies of which are attached, collectively marked as Exhibit
9 "C," and are incorporated herein by this reference as though fully set forth at length. As to each of
10 the responding parties, the answer to the interrogatory was as follows:

11 "The documents were produced by the responding party's attorney in
12 response to the production demands. The responding party was never personally in
13 possession of any of the responsive documents and (he/she) does not have any
14 knowledge as to how those documents came to be in her attorney's possession."

15 8. The responses (Exhibit "C") were served via U.S. Mail on July, 19, 2011. Because no
16 motion to compel further responses has been timely filed by the Defendants, and further because the
17 motion cutoff date has long since passed, additional discovery into this issue is not appropriate at
18 this time.

19 9. Therefore, and for the reasons set forth in the pleading filed by Cross-Defendant
20 Omar Rodriguez, Plaintiffs Steve Karagiosian and Cindy Guillen-Gomez respectfully request that
21 the discovery cutoff remain closed, and that they be discharged from further use of the Discovery
22 Referee.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Dated this 6th day of September, 2011 in the City of Encino, California.

26 
27 SOLOMON E. GRESEN
28

EXHIBIT A

Defendants City of Burbank ("City") and Burbank Police Department ("Department") move for a preliminary injunction requiring Plaintiffs and their attorneys to return the originals and all copies of various documents in their possession, custody or control which Defendants contend are confidential peace officer personnel records. The court has read and considered the moving papers, the City's supplemental brief,¹ opposition, and replies, and renders the following tentative decision.

A. Statement of the Case

On May 28, 2009, Plaintiffs filed a Complaint against the Department and various individual Defendants alleging various forms of discrimination and harassment.

On August 6, 2009, Defendants applied *ex parte* for a temporary restraining order ("TRO") and order to show cause ("OSC") re: preliminary injunction restraining Plaintiffs from using any documents from the personnel files of third party police officers in Plaintiffs' possession, and ordering Plaintiffs to gather and return to the City all copies of such records. The court issued a protective order requiring that all Department personnel records in Plaintiffs' possession be collected and maintained in a separate location in Plaintiffs' counsel's office and that such records not be used directly or derivatively pending hearing on the OSC. The parties were directed to file supplemental briefs on the issue of whether the records were personnel records protected by privilege and must be returned to the Department.

B. Applicable Law

An injunction is a writ or order requiring a person to refrain from a particular act; it may be granted by the court in which the action is brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the court. CCP §525. An injunction may be more completely defined as a writ or order commanding a person either to perform or to refrain from performing a particular act. See Comfort v. Comfort (1941) 17 Cal.2d 736, 741. McDowell v. Watson (1997) 59 Cal.App.4th 1155, 1160.² It is an equitable remedy available generally in the protection or to prevent the invasion of a legal right. Meridian, Ltd. v. City And County of San

¹The supplemental brief filed by the individual third party officers was not served by email on Plaintiffs' counsel as required by the court's August 6 order, and was not received by Plaintiffs' counsel in the regular mail until August 14, 2009. As a result of this violation, the individual officers' supplemental brief has not been considered.

²The courts look to the substance of an injunction to determine whether it is prohibitory or mandatory. Agricultural Labor Relations Bd. v. Superior Court, (1983) 149 Cal.App.3d 709, 713. A mandatory injunction--one that mandates a party to affirmatively act, carries a heavy burden: "[t]he granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established." Teachers Ins. & Annuity Assoc. v. Furlotti, (1999) 70 Cal.App.4th 187, 1493.

Francisco, et al. (1939) 13 Cal.2d 424.

The purpose of a preliminary injunction is to preserve the *status quo* pending final resolution upon a trial. See Scaringe v. J.C.C. Enterprises, Inc. (1988) 205 Cal.App.3d 1536. Grothe v. Cortlandt Corp. (1992) 11 Cal.App.4th 1313, 1316; Major v. Miraverde Homeowners Assn. (1992) 7 Cal.App.4th 618, 623. The *status quo* has been defined to mean the last actual peaceable, uncontested status which preceded the pending controversy. Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995, quoting United Railroads v. Superior Court (1916) 172 Cal. 80, 87. 14859 Moorpark Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396, 1402.

A preliminary injunction is issued after hearing on a noticed motion. The complaint normally must plead injunctive relief. CCP §526(a)(1)-(2).³ Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. See e.g. Ancora-Citronelle Corp. v. Green, 41 Cal.App.3d 146, 150. Injunctive relief may be granted based on a verified complaint only if it contains sufficient evidentiary, not ultimate, facts. See CCP §527(a). For this reason, a pleading alone rarely suffices. Weil & Brown, California Procedure Before Trial, 9:579, 9(11)-21 (The Rutter Group 2007). The burden of proof is on the plaintiff as moving party. O'Connell v. Superior Court, (2006) 141 Cal.App.4th 1452, 1481.

A plaintiff seeking injunctive relief must show the absence of an adequate damages remedy at law. CCP §526(4); Thayer Plymouth Center, Inc. v. Chrysler Motors, (1967) 255 Cal.App.2d 300, 307; Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1565. The idea "inadequacy of the legal remedy" or "inadequacy of damages" dates from the time of the early courts of chancery, the idea being that an injunction is an unusual or extraordinary equitable remedy which will not be granted if the remedy at law (usually damages) will adequately compensate the injured plaintiff. Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1565.

In determining whether to issue a preliminary injunction, the trial court considers two factors: (1) the reasonable probability that the plaintiff will prevail on the merits at trial (CCP §526(a)(1)), and (2) a balancing of the "irreparable harm" that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. CCP §526(a)(2) 14859 Moorpark Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396, 1402; Pillsbury, Madison & Sutro v. Schectman (1997) 55 Cal.App.4th 1279, 1283; Davenport v. Blue Cross of California (1997) 52 Cal.App.4th 435, 446; Abrams v. St. Johns Hospital (1994) 25 Cal.App.4th 628, 636. Thus, a preliminary injunction may not issue without some showing of potential entitlement to such relief. Doe v. Wilson (1997) 57 Cal.App.4th 296, 304. The decision to grant a preliminary injunction generally lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. Thornton v. Carlson (1992) 4 Cal.App.4th 1249, 1255.

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. See

³However, a court may issue an injunction to maintain the *status quo* without a cause of action in the complaint. CCP §526(a)(3).

C. Analysis

Defendants seek the return of third party police officer personnel records in the possession of Plaintiffs' counsel. Defendants identify the records at issue by Bates number in the Declaration of Tim Stehr.⁴ Both the City and the individual officers⁵ are asserting the privilege and seeking injunctive relief for the release of confidential personnel information and records.

Penal Code section 832.7 provides that peace officer personnel records, and information obtained from these records, are privileged and confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Evidence Code Section 1043. *See* Penal Code §832.7 ("peace officer personnel records. . . are confidential and shall not be disclosed in any criminal or civil proceeding, except by discovery pursuant to Section 1043 of the Evidence Code).

"Personnel records" are defined as any file maintained under an officer's name by his or her employing agency and containing records relating to any of the following: "(a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information. (b) Medical history. (c) Election of employee benefits. (d) Employee advancement, appraisal, or discipline. (e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties. (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy." Penal Code §832.8.

Section 832.7 protects peace officer personnel records against disclosure except pursuant to the Pitchess procedures of Evidence Code section 1043 and 1045. *See City of Santa Cruz v. Superior Court*, (1987) 190 Cal.App.3d 1669. It prohibits any disclosure of police personnel records and is not limited to those made in a legal proceeding. *See Copley Press v. Superior Court*, (2006) 39 Cal.4th 1272, 1284-86. "[T]he privilege against disclosure of official police records is held both by the individual officer involved and by the police department." Davis v. City of Sacramento, (1994) 24 Cal.App.4th 393, 401.

Police personnel records are customarily maintained in either a general personnel file or a separate file containing complaints and reports or findings relating to complaints maintained for five years. Penal Code §832.5. However, despite the literal language of section 832.8 in referring to a personnel "file," the content of the document, not its location, is determinative. Otherwise, a clearly public document such as a newspaper article could be deemed confidential if placed in an otherwise protected personnel file. Therefore, only the types of information

⁴The City's supplemental brief adds two documents, Bates OR 385 and OR 340, to the application.

⁵Officer Anthony Valento has withdrawn the application for injunctive relief brought on his behalf.

enumerated in section 832.8 constitute protected peace officer personnel records. Commission on Peace Officer Standards & Training v. Superior Court, (2007) 42 Cal.4th 278, 290-91. The category of "personal data" in section 832.8 includes the type of information normally supplied by an employee to his or her employer, and does not include information, such as salary arising from the officer's employment with the police department. International Federation of Professional & Technical Engineers, (2007) 42 Cal.4th 319, 342-43.

The City's *ex parte* application sought the return of police personnel records only. In support of that application, the City submitted the Declaration of Tim Stehr, its police chief, who stated that all of the Bates-stamped records in question were confidential police personnel records. This declaration is impermissibly vague and conclusory to constitute sufficient evidence to meet the City's burden of proof that the records in question are police personnel records.

In response to the *ex parte* application, Plaintiffs' counsel reviewed the list of Bates-stamped documents identified by the City as constituting confidential peace officer personnel records, and has determined that many do qualify as personnel records under section 832.8. Those documents have been returned, and all electronic copies destroyed. Plaintiffs contend that the remaining documents are not peace officer personnel records, but are simply business records of the City. Plaintiffs have described the documents and proffered argument as to why those documents need not be returned.

The argue, and the court agrees, that standing alone the following documents by themselves are not police officer personnel records: (1) Memoranda Requesting an Interview with a Witness or Criminal Defendant (OR 400, 401, 502, 1032, 1033, 1134, 1243, 1244, 1345, CG 0400, 0401, 0502). A memorandum requesting a meeting with a witness does not contain personal information about a police officer; (2) DMV Records of a Criminal Defendant (OR 402, 1034, CG 0402) DMV records of a third party are public information. *See Veh. Code §1808; Govt. Code §62353 et seq.*; (3) ICE Transfer Records of a Criminal Defendant (OR 403, 528-529, 531, 1035, 1160-1163, 1246, 1371-1372, CG 0403, 0528-0529) Deportation records of a criminal defendant are not personnel records pursuant to section 832.8; (4) Department of Justice Record of Deportable Alien (OR 404-405, 1036-1037, 1247-1248, 1373-1374, CG 0404-0405, 0530-0531) Documents describing the deportation of a criminal defendant are not police personnel records; (5) Arrest Records, Booking Records, and/or Police Reports Regarding the Arrest of Criminal Defendants (OR 464-493, 503-527, 1096-1125, 1135-1159, 1307-1336, 1346-1370) Arrest records of non-officer suspects contain no personal information about the arresting officers; (6) Pursuit Reports (OR 1026, 1028, 1238-1239, CG 0395-0396, 0464-0493, 0503-0527) A pursuit report contains information regarding the pursuit of a criminal suspect and is not a personnel record; and (7) Business Cards (OR 1245) A business card is not a personnel record.

In reply, the City and the individual officers argue that there is a difference between a non-protected document placed in a personnel file simply to hide it and a document that is attached to an investigative report to as an exhibit or placed in the file to give it context, background, or reference and to lend intelligibility to the documents directly revealing an investigation of the pertinent officer. In support, the City provides a much more detailed Declaration of Tim Stehr identifying the remaining Bates-stamped pages at issue and explaining why the documents are protected.

The vast majority of the otherwise innocent documents at issue are documents that are

referenced and contained in an administrative investigation of third party police officers. A number of them were authored by Plaintiff Rodriguez as an internal affairs investigator. Although standing alone these documents are not personnel records, they are when attached to an investigative report as evidence or an exhibit. It is no different than if the exhibit had been directly quoted within the investigative report. Any risk that the Department will try to hide a document from disclosure in a personnel file is disposed of by the fact that the investigative report refers to and relies on the document. Thus, the above otherwise innocent records are cloaked with police personnel record confidentiality where they were attached and referred to in an investigative report protected by section 832.8. Therefore, Plaintiffs must return the records listed in the Stehr declaration as having been "referenced in and contained in an administrative investigation of a third party."

In addition, the following documents are personnel records: (1) memos from a deputy chief to the chief of police concerning an internal investigation (OR578, OR1210, OR1425, and CG578). Stehr Decl. ¶16; (2) a comment card for a third party police officer is also a personnel record (OR1022, OR1232, CG390). Stehr Decl. ¶17; and (3) the ranking results for promotion to police detective (CG385). Stehr Decl. ¶23. As the City argues, detective rankings are "employee advancement, appraisal...records" under section 832.8 because they contain the ranking of officers for promotion to detective based on test scores and promotability points. The document clearly relates to each officer's employment advancement and appraisal. Even though not located in an individual officer's personnel file, the document is a personnel record of each listed officer.

This does not dispose of all the records at issue. There are some records that are from Plaintiffs' own personnel files, including investigative reports. The City argues that it has the privilege to prevent another person from disclosing official information obtained in confidence by an employee in the course of his or her duties. Ev. Code §1040. It states that it will waive its right to maintain the confidentiality of Plaintiffs' personnel records if they sign a waiver. Whatever the City's rights in this regard, they are outside the scope of this application. Therefore, Plaintiffs are not required to return records from their own personnel files, including internal affairs investigations of them, as part of the application seeking the return of police personnel records under section 832.7.

Finally, there is OR 402, OR1034, and CG402, which are Justice Data Interface Control printouts for police business use only. Stehr Decl. ¶5; (2) While these records may be protected by another privilege (official information), they are not personnel records and are outside the scope of this application.

D. Conclusion

The application for a preliminary injunction requiring the return of documents is granted in part. Except for the documents of which Plaintiffs themselves were the subject and the Justice Data Interface Control printouts, Plaintiffs are ordered to return to the Department the peace officer personnel records identified in the application and destroy any and all electronic copies to the extent they have not already done so.

EXHIBIT B

#6

Omar Rodriguez, et al. v. Burbank Police Department, et al.
BC 414602
October 2, 2009

Motions of Defendants City of Burbank and Burbank Police Department (1) to Compel Deposition Testimony of Plaintiffs Elfego Rodriguez and Omar Rodriguez and (2) Appointing Discovery Referee; request for sanctions

The court takes judicial notice of plaintiffs' motion for protective order, including its attachments, but not of the truth of the matters stated therein.

The motion to compel the continued deposition of plaintiff Elfego Rodriguez is granted. Counsel are ordered to meet and confer in the jury room before leaving Dept. 37 today to agree on the date, time and place of the continued deposition. The motion to compel plaintiff Omar Rodriguez to answer certain deposition questions is denied. The motion for appointment of a discovery referee is granted. The parties are to share the cost of the referee equally. CCP §639(d)(6)(A). Counsel are ordered to meet and confer in the jury room before leaving Dept. 37 today to reach agreement, if possible, on a discovery referee. If the parties are unable to agree, each party is ordered to submit to the court before leaving Dept. 37 a list of up to three nominees for appointment as referee. CCP §640. No sanctions.

Elfego Rodriguez deposition. A protective order "may include, but is not limited to, one or more of the following directions: . . . (12) that designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition." CCP § 2025.420. The court is not inclined to exclude defendants' representatives from the depositions at this time. *Lowy Development Corporation v. Superior Court* (1987) 190 Cal.App.3d 317, where limitations were imposed to prevent possible collusion, does not apply here because plaintiffs' counsel indicated that he did not wish to prevent the representatives from observing the testimony by stating that they could watch plaintiffs' testimony on videotape. Plaintiffs' claims of collusion and intimidation of witnesses are speculative in any event. If the police officers were still parties to the action, they would be permitted to attend plaintiffs' depositions, regardless of whether plaintiffs might feel intimidated by their presence. To the extent that the police officers are attending the depositions in the capacity of a representative of the defendant Department, plaintiffs fail to demonstrate sufficient grounds for excluding them. Finally, plaintiffs' desire to prevent certain representatives from attending the depositions is impractical. It is not likely that the City and/or Department can always predict that a particular representative will always be available to attend every deposition. In addition, despite plaintiffs' assertions that several persons who have attended the depositions had no reason to be there, defendants demonstrate that those persons (Ms. Rosoff and Ms. Arutyunyan) are a litigation assistant and paralegal, respectively, who are assisting defense counsel with the litigation of this matter.

Plaintiffs' request that the court delay its decision on this issue until their motion for protective order is heard on October 29, 2009 is denied. Plaintiff Elfego Rodriguez walked out of his deposition on August 10, 2009. Plaintiffs did not file the motion for protective order until September 21, 2009. Defendants filed their motion to compel his attendance at deposition on

B

August 20, 2009 and are entitled to have a ruling on it without delay.

Omar Rodriguez deposition questions. Defendants seek testimony responsive to the following question: "Who did you give these documents to that I've marked as OR0401 through -585?" Plaintiffs' counsel's objection on the grounds that the question sought information violative of the attorney-client privilege is well-taken. The attorney-client privilege covers all forms of communication, including the transmission of specific documents. *Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 600; *Wellpoint Health Networks v. Superior Court* (1997) 59 Cal.App.4th 110, 119. To the extent that plaintiff provided any or all of the documents to his attorney, such information is entitled to the attorney-client privilege. The fact of transmission triggers the privilege. Defendants argument that the transmission of the documents is not protected by the attorney-client privilege because the transmission does not provide any insight into case strategy is not persuasive. Even though the documents at issue were produced to defendants in response to defendants' discovery requests, it cannot be reasonably disputed that responding to the question would tend to reveal the significance that plaintiff and/or his counsel ascribe to the documents. The documents would not have been given to counsel (if they were) unless they had some significance to plaintiff's case. Thus, plaintiff's testimony regarding the fact of the transmission would tend to reveal the transmitter's intended strategy.

Discovery referee. A referee may be appointed on motion of any party or on the court's own motion where necessary "to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon." (CCP §639(a).) Appointment of a discovery referee is authorized only where "necessary" to hear and determine such motions or disputes. CCP §638(a)(5); Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2006) ¶8:1804-8:1804.1. The court finds that appointment of a discovery referee is necessary to hear and determine discovery disputes, based on the Michaels declaration, which recites the "exceptional circumstances" that require the reference (CCP §639(d)(2)), and which plaintiffs' counsel does not refute. Appointment of a referee is justified where antagonism between the parties and/or counsel might otherwise prolong the proceedings and frustrate discovery. Weil & Brown, supra, ¶8:1804.5. Where no party has established an inability to pay a pro rata share of the referee's fees, the court may order the fees to be split on a pro rata basis. Id. at ¶8:1804.20. Plaintiffs make no showing that the cost of a discovery referee would be prohibitive or that they cannot not afford a pro rata share of the expenses.

Sanctions. Because both parties presented colorable arguments for their positions, imposition of sanctions against plaintiffs would be unjust. CCP §§ 2025.450(c)(1), 2025.480(f).

EXHIBIT C

SOLOMON E. GRESEN [SBN: 164783]
STEVEN V. RHEUBAN [SBN: 48538]
LAW OFFICES OF RHEUBAN & GRESEN
15910 VENTURA BOULEVARD, SUITE 1610
ENCINO, CALIFORNIA 91436
TELEPHONE: (818) 815-2727
FACSIMILE: (818) 815-2737

Attorneys for Plaintiffs Omar Rodriguez, Steve Karagiosian,
Cindy Guillen-Gomez, Elfego Rodriguez and Jamal Childs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE.

Defendants.

BURBANK POLICE DEPARTMENT; CITY OF
BURBANK,

Cross-Complainants,

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant

CASE NO.: BC 414 602

Complaint Filed: May 28, 2009

Assigned to: Hon. Joanne B. O'Donnell, Judge

SECOND FURTHER RESPONSES TO
SPECIAL INTERROGATORIES, SET
THREE (3)

Complaint filed: May 28, 2009

Trial Date: April 12, 2011 (Plaintiff Guillen)
June 8, 2011 (Plaintiff Karagiosian)
July 27, 2011 (Plaintiff O. Rodriguez)

PROPOUNDING PARTY: DEFENDANT, CITY OF BURBANK

RESPONDING PARTY: PLAINTIFF, CINDY GUILLEN-GOMEZ

SET NUMBER: THREE

//

1 TO DEFENDANTS, CITY OF BURBANK AND TO THEIR ATTORNEY(S) OF
2 RECORD:

3 Plaintiff, CINDY GUILLEN-GOMEZ further responds to Defendant, CITY OF
4 BURBANK's Special Interrogatories, Set No. Three as follows:

5 **INTRODUCTION**

6 It should be noted that responding party has not fully completed investigation of the facts
7 relating to this matter, has not fully completed discovery in this action nor preparation for trial.
8 Further discovery, independent investigation, legal research and analysis may expose additional
9 facts which may lead to substantial changes in the responses herein set forth. Therefore, the
10 following responses are given without prejudice to responding party's right to introduce evidence of
11 any subsequently discovered facts contained herein which responding party may later obtain or
12 discover. Responding party accordingly reserves the right to supplement the responses herein below
13 as additional facts are ascertained, analyses are made, legal research is completed and contentions
14 are further developed.

15 **SPECIAL INTERROGATORY NO. 10:**

16 IDENTIFY each SOURCE from which YOU or YOUR AGENT obtained originals or
17 copies of any RETURNED/DESTROYED DOCUMENT. (For purposes of these Interrogatories:
18 the term "IDENTIFY" means state the name and address of the SOURCE; the term "SOURCE"
19 means the natural person who provided the document or copy to you or your agent; the term "YOU"
20 means the plaintiff to whom these Interrogatories are addressed; the term "AGENT" means any
21 person acting on your behalf, including your attorneys and also including your co-plaintiffs in this
22 action; the term "RETURNED/DESTROYED DOCUMENT" refers to any and all documents YOU
23 or YOUR AGENT destroyed or returned to Defendant City of Burbank as a result of: (1)
24 Defendant's Ex Parte Application for Temporary Restraining Order And For Order To Show Cause
25 Re: Preliminary Injunction filed on August 6, 2009; (2) related and supplemental papers filed with
26 the Court; (3) Judge Chalfant's Order dated August 27, 2009; and/or (4) Judge Chalfant's Order
27 dated October 13, 2009.)

28 ///

1 SECOND FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 10:

2 Pursuant to the Amended 12th Report and Recommendation of the Discovery Referee, and
3 without waiving any of the objections maintained in response to this Interrogatory, the responding
4 party replies as follows: The responding party has no personal knowledge of the answer to this
5 interrogatory. The documents were produced by the responding party's attorney in response to the
6 production demands. The responding party was never personally in possession of any of the
7 responsive documents and she does not have any knowledge as to the source of the documents in
8 her attorney's possession. Discovery is ongoing and the responding party reserves the right to
9 amend this response as more information becomes known.

10 SPECIAL INTERROGATORY NO. 11:

11 If YOU or YOUR AGENT obtained originals or copies of any RETURNED/DESTROYED
12 DOCUMENTS directly from a physical location where those document were stored, without the
13 involvement of any natural person as an intermediary, describe in full and complete detail how
14 YOU or YOUR agent obtained physical custody of each such document.

15 SECOND FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 11:

16 Pursuant to the Amended 12th Report and Recommendation of the Discovery Referee, and
17 without waiving any of the objections maintained in response to this Interrogatory, the responding
18 party replies as follows: The responding party has no personal knowledge of the answer to this
19 interrogatory. The documents were produced by the responding party's attorney in response to the
20 production demands. The responding party was never personally in possession of any of the
21 responsive documents and she does not have any knowledge as to how those documents came to be
22 in her attorney's possession. Discovery is ongoing and the responding party reserves the right to
23 amend this response as more information becomes known

24
25 Dated: July 19, 2011

LAW OFFICES OF RHEUBAN & GRESEN

26
27 By: _____

Solomon E. Gresen
Attorneys for Plaintiffs

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing Second Further Responses to Special Interrogatories, Set Three and know its contents.

XX I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

___ I am an officer ___ Partner

___ a ___ of ___ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

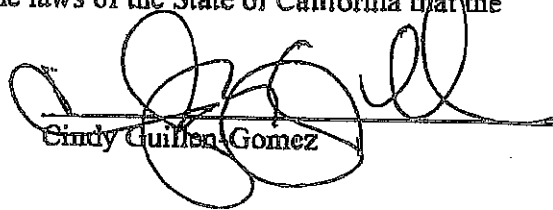
___ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

___ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

___ I am one of the attorneys for ___ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on 7/19/2011 at Encino, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Cindy Guillen Gomez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I am over the age of eighteen and am not a party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino, California 91436.

On July 19, 2011, I served the foregoing document, described as **SECOND FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET NO. THREE** on the interested parties, through their respective attorneys of record in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Lawrence A. Michaels
Mitchell Silberberg & Knupp LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Email: LAM@msk.com

Linda Miller Savitt, Esq.
Ballard Rosenberg Golper & Savitt, LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, California 91203
Email: lsavitt@brgslaw.com

Carol Ann Humiston
Senior Assistant City Attorney
Office of the City Attorney
275 East Olive Avenue,
Burbank, California 91510-6459
Email: chumiston@ci.burbank.ca.us

Robert Tyson, Esq.
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071
Email: RTyson@bwslaw.com

Thomas G. Mackey, Esq.
Jackson Lewis LLP
725 South Figueroa Street
Suite 2500
Los Angeles, California 90017
Email: mackeyt@jacksonlewis.com

XX **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

XX **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address listed above. My electronic notification address is ag@rglawyers.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A copy of the electronic transmission showing the time of service is attached.

XX **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on July 19, 2011, at Encino, California.


Annette Goldstein

SOLOMON E. GRESEN [SBN: 164783]
STEVEN V. RHEUBAN [SBN: 48538]
LAW OFFICES OF RHEUBAN & GRESEN
15910 VENTURA BOULEVARD, SUITE 1610
ENCINO, CALIFORNIA 91436
TELEPHONE: (818) 815-2727
FACSIMILE: (818) 815-2737

Attorneys for Plaintiffs Omar Rodriguez, Steve Karagiosian,
Cindy Guillen-Gomez, Elfego Rodriguez and Jamal Childs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE.

Defendants.

BURBANK POLICE DEPARTMENT; CITY OF
BURBANK,

Cross-Complainants,

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant

CASE NO.: BC 414 602

Complaint Filed: May 28, 2009

Assigned to: Hon. Joanne B. O'Donnell, Judge

SECOND FURTHER RESPONSES TO
SPECIAL INTERROGATORIES, SET
THREE (3)

Complaint filed: May 28, 2009

Trial Date: April 12, 2011 (Plaintiff Guillen)

June 8, 2011 (Plaintiff Karagiosian)

July 27, 2011 (Plaintiff O. Rodriguez)

PROPOUNDING PARTY: DEFENDANT, CITY OF BURBANK

RESPONDING PARTY: PLAINTIFF, STEVE KARAGIOSIAN

SET NUMBER: THREE

//

1 TO DEFENDANTS, CITY OF BURBANK AND TO THEIR ATTORNEY(S) OF
2 RECORD:

3 Plaintiff, STEVE KARAGIOSIAN further responds to Defendant, CITY OF BURBANK's
4 Special Interrogatories, Set No. Three as follows:

5 INTRODUCTION

6 It should be noted that responding party has not fully completed investigation of the facts
7 relating to this matter, has not fully completed discovery in this action nor preparation for trial.
8 Further discovery, independent investigation, legal research and analysis may expose additional
9 facts which may lead to substantial changes in the responses herein set forth. Therefore, the
10 following responses are given without prejudice to responding party's right to introduce evidence of
11 any subsequently discovered facts contained herein which responding party may later obtain or
12 discover. Responding party accordingly reserves the right to supplement the responses herein below
13 as additional facts are ascertained, analyses are made, legal research is completed and contentions
14 are further developed.

15 SPECIAL INTERROGATORY NO. 10:

16 IDENTIFY each SOURCE from which YOU or YOUR AGENT obtained originals or
17 copies of any RETURNED/DESTROYED DOCUMENT. (For purposes of these Interrogatories:
18 the term "IDENTIFY" means state the name and address of the SOURCE; the term "SOURCE"
19 means the natural person who provided the document or copy to you or your agent; the term "YOU"
20 means the plaintiff to whom these Interrogatories are addressed; the term "AGENT" means any
21 person acting on your behalf, including your attorneys and also including your co-plaintiffs in this
22 action; the term "RETURNED/DESTROYED DOCUMENT" refers to any and all documents YOU
23 or YOUR AGENT destroyed or returned to Defendant City of Burbank as a result of: (1)
24 Defendant's Ex Parte Application for Temporary Restraining Order And For Order To Show Cause
25 Re: Preliminary Injunction filed on August 6, 2009; (2) related and supplemental papers filed with
26 the Court; (3) Judge Chalfant's Order dated August 27, 2009; and/or (4) Judge Chalfant's Order
27 dated October 13, 2009.)

28 ///

1 SECOND FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 10:

2 Pursuant to the Amended 12th Report and Recommendation of the Discovery Referee, and
3 without waiving any of the objections maintained in response to this Interrogatory, the responding
4 party replies as follows: The responding party has no personal knowledge of the answer to this
5 interrogatory. The documents were produced by the responding party's attorney in response to the
6 production demands. The responding party was never personally in possession of any of the
7 responsive documents and he does not have any knowledge as to the source of the documents in his
8 attorney's possession. Discovery is ongoing and the responding party reserves the right to amend
9 this response as more information becomes known.

10 SPECIAL INTERROGATORY NO. 11:

11 If YOU or YOUR AGENT obtained originals or copies of any RETURNED/DESTROYED
12 DOCUMENTS directly from a physical location where those document were stored, without the
13 involvement of any natural person as an intermediary, describe in full and complete detail how
14 YOU or YOUR agent obtained physical custody of each such document.

15 SECOND FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 11:

16 Pursuant to the Amended 12th Report and Recommendation of the Discovery Referee, and
17 without waiving any of the objections maintained in response to this Interrogatory, the responding
18 party replies as follows: The responding party has no personal knowledge of the answer to this
19 interrogatory. The documents were produced by the responding party's attorney in response to the
20 production demands. The responding party was never personally in possession of any of the
21 responsive documents and he does not have any knowledge as to how those documents came to be
22 in his attorney's possession. Discovery is ongoing and the responding party reserves the right to
23 amend this response as more information becomes known

24
25 Dated: July 19, 2011

LAW OFFICES OF RHEUBAN & GRESSEN

26
27 By: _____

Solomon E. Gressen
Attorneys for Plaintiffs

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing Second Further Responses to Special Interrogatories, Set Three and know its contents.

XX I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

___ I am an officer ___ Partner

___ a _____ of _____ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

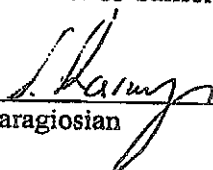
___ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

___ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

___ I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on July 19, 2011, at Encino, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Steve Karagiosian

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I am employed in the County of Los Angeles. I am over the age of eighteen and am not a party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino, California 91436.

On July 19, 2011, I served the foregoing document, described as **SECOND FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET NO. THREE** on the interested parties, through their respective attorneys of record in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Linda Miller Savitt, Esq.
Ballard Rosenberg Golper & Savitt, LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, California 91203
Email: lsavitt@brgslaw.com

Robert Tyson, Esq.
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071
Email: RTyson@bwslaw.com

Thomas G. Mackey, Esq.
Jackson Lewis LLP
725 South Figueroa Street
Suite 2500
Los Angeles, California 90017
Email: mackeyt@jacksonlewis.com

XX **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

XX **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address listed above. My electronic notification address is ag@rglawyers.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A copy of the electronic transmission showing the time of service is attached.

XX STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on July 19, 2011, at Encino, California.

Annette Goldstein

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles. I am over the age of eighteen and am not a
4 party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino,
California 91436.

5 On September 6, 2011, I served a copy of the following document described as follows:
6 Plaintiff's Motion for Protective Order; Memorandum of Points and Authorities; Declaration of
Solomon E. Gresen in Response to the Court's Direction on August 31, 2011 on the interested
parties in this action as follows:

7 Lawrence A. Michaels
8 Mitchell Silberberg & Knupp LLP
11377 West Olympic Boulevard
9 Los Angeles, CA 90064-1683
Facsimile: (310) 312-3100

Linda Miller Savitt, Esq.
Ballard Rosenberg Golper & Savitt, LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, California 91203
Facsimile: (818) 506-4827

10 Carol Ann Humiston
11 Senior Assistant City Attorney
Office of the City Attorney
12 275 East Olive Avenue,
Burbank, California 91510-6459
13 Facsimile: (818) 238-5724

Gregory Smith, Esq.
Law Offices of Gregory W. Smith
6300 Canoga Avenue, Suite 1590
Woodland Hills, CA 91367
Facsimile: (818) 712-4004

14 Thomas G. Mackey, Esq.
15 Jackson Lewis LLP
725 South Figueroa Street, Suite 2500
16 Los Angeles, California 90017
Facsimile: (213) 689-0430

17 **XX** **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed
as above, and placing each for collection and mailing on that date following ordinary
18 business practices. I am "readily familiar" with this business's practice for collecting
and processing correspondence for mailing. On the same day that correspondence is
19 placed for collection and mailing, it is deposited in the ordinary course of business with
the U.S. mail Postal Service in Los Angeles, California, in a sealed envelope with
20 postage fully prepaid.

21 **BY FACSIMILE:** Based on an agreement of the parties to accept service by facsimile
transmission, I faxed the documents to the person(s) at the facsimile numbers listed
22 above. The telephone number of the sending facsimile machine is (818) 815-2737. The
sending facsimile machine issued a transmission report confirming that the transmission
23 was complete and without error. A copy of that report showing the time of service is
attached.

24 **XX** **STATE:** I declare under penalty of perjury under the laws of the State of California that
25 the above is true and correct.

26 EXECUTED on September 6, 2011, Encino, California.

27 _____
Daphne Johnson